

M E M O R A N D U M
DSS-524EL

TO: All Hearing Officers and Supervising Hearing Officers

DATE: May 13, 1998

FROM: Russell J. Hanks
RJH

SUBJECT: Policy Guidelines:
Good Cause

e-mailed 5/13/98

The purpose of this memorandum is to clarify the Office of Administrative Hearings' (OAH) policy on the burden of proof in employment cases to ensure that it comports with regulatory and judicial requirements. As noted in my memorandum of December 11, 1996, 18 NYCRR §358-5.9 provides that the social services agency has the burden of establishing that its determination was correct where the issue for the hearing involves the discontinuance, reduction or suspension of benefits or services.

Where the agency has determined to impose a sanction for failure to comply with work rules, the agency must produce evidence establishing the elements of the appellant's willful failure to cooperate without good cause or its determination cannot be affirmed. The agency's burden, however, is limited to coming forward with the basic components of a work rules violation, i.e., the failure to report, and the absence of any good cause reason presented by the appellant.

Under 18 NYCRR §351.26, the applicant or recipient is responsible for notifying the social services district of the reason for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The agency must review the information and evidence provided by the appellant, if any, and determine whether the information and evidence support a finding of good cause. Accordingly, individuals who contend they have good cause have the burden of demonstrating good cause. (See Sirota v. Hammons and Wing (Sup. Ct., New York County, April 21, 1997).

RJH:hp

cc: John E. Robitzek
Sebastian Addamo